

November 30, 2022

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In Re FLINT WATER CASES Case No. 16-10444

STATUS CONFERENCE

BEFORE THE HONORABLE JUDITH E. LEVY
UNITED STATES DISTRICT JUDGE

NOVEMBER 30, 2022

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P R O C E E D I N G S

THE CLERK: Calling the Flint Water Cases.

THE COURT: Okay. Thank you.

And we already have appearances taken down. So we can get right to our work together. And we issued an agenda for this status conference. And as agendas go, it's relatively short. So hopefully we can work our way through this material.

The first topic was one submitted by, I think, Mr. Stern and his firm. And it relates to VNA's opposition to co-liaison counsel's notice of the deposition of Pierre Farcot, who is a communications director and special advisor to the chairman at Veolia. And apparently he is responsible for crisis communication.

And that deposition, I think, was scheduled for today.

So let's see, Mr. Stern, did the deposition -- I assume it didn't take place then?

MR. STERN: No, Your Honor.

THE COURT: Okay. And is there anything more you want to say? I see that you're trying to take this individual's deposition. And it relates to our case.

MR. STERN: So Mr. Farcot during the trial and prior to the trial was employed by Veolia Environment SE. That's based on our research and investigation. That's the French

1 entity for Veolia.

2 He attended the trial almost every week. Sat in the
3 back of the courtroom. I believe he was there the day Your
4 Honor asked about the Twitter account. And it turns out that
5 Mr. Farcot was the individual who was not only responsible
6 according to testimony from other VNA witnesses for the Veolia
7 Flint Facts website, the content on the website, the updates
8 to the content on the website, but also the Twitter account.

9 During the course of the deposition of Carrie
10 Griffiths, who is presently the communications director for
11 VNA, she described that prior to trial, there were two, in her
12 words, monumental events taking place at the same time.

13 One was the merger between Suez and Veolia, which the
14 Court is aware of based on the Richard Humann issues that
15 evolved throughout trial. And the other monumental event was
16 the trial.

17 And according to the current communications director
18 for VNA, Veolia determined that the American company, VNA,
19 would handle all communications related to the merger, and
20 French -- the French company would handle everything related
21 to the trial.

22 So Mr. Farcot, based on my own attendance and
23 participation in the trial, was there. It appears he was
24 Tweeting from the courtroom or outside the courtroom. I
25 watched him interact repeatedly with not only attorneys for

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1 Veolia but other individuals who were there for Veolia.

2 And when I noticed the deposition, I was told two
3 things by Mr. Kramer. One is that he's no longer employed by
4 Veolia and that was like as of the date of the deposition. He
5 just suddenly didn't work there anymore despite his LinkedIn
6 profile which he's active on. I'm still showing he does as of
7 I think this morning or yesterday.

8 And two, even if he did, VNA and Veolia are not the
9 same thing and they have no control over him. And so they've
10 pushed me to The Hague Convention.

11 The same is true as to item number 2 on Your Honor's
12 agenda, which is an individual by the name of Laurent Obadia.
13 He had previously been deposed. This is the person who still
14 works for Veolia who Mr. Farcot actually worked under who was
15 in charge of Mr. Farcot's activities.

16 And even though he does work for Veolia, I have been
17 advised by counsel for VNA that they have no control over
18 Mr. Obadia and Mr. Obadia is not part of any entity that's a
19 part of this litigation. And that again, I must go through
20 The Hague Convention in order to get both of these
21 individual's testimony.

22 So I'm not sure exactly what Your Honor can do, but
23 there's a dispute about the scope of what Your Honor has
24 permitted in terms of discovery and the import of the
25 information campaign that Veolia had undertaken prior to and

1 during the trial.

2 My impression is that Veolia believes that that's
3 only related to geotargeting. And if there's no documents
4 that show geotargeting, the inquiry should end there. And
5 that not only do these two individuals not work for VNA, one
6 of whom doesn't work for any Veolia entities, not only are
7 they in France, but I need to stop this process of doing
8 discovery because I have, according to them, what I need.

9 So that's the dispute.

10 THE COURT: Okay. And who is going to respond.
11 Would that be you, Mr. Kramer?

12 MR. OLSEN: I'll respond, Your Honor. Mike Olsen.
13 And there are a few problems with these two depositions. And
14 let me start where Mr. Stern finished with respect to the
15 scope of discovery.

16 He's noticed and taken many depositions and gotten
17 many documents with respect to PR discovery. During the
18 October status conference, Your Honor noted that this
19 discovery does not go to any claims or defenses in this case.

20 But rather you noted the Detroit News article that
21 had alleged that VNA may have geotargeted ads to potential
22 jurors or actual jurors. And that that was a topic of
23 significant interest. And you asked me to reconsider our
24 discovery position to enable Mr. Stern to address this
25 allegation that there was geotargeting with respect to the

1 jurors.

2 We took your admonition to heart and that's exactly
3 what we did. We revised our request to admit responses. We
4 revised our document responses to produce all of the Google
5 ads that were related to the advertisements that went out.
6 Google sponsored search does offer the ability to target
7 specific regions, states, zip codes.

8 The documents and the deposition testimony make clear
9 that VNA never utilized these geotargeting or geofencing
10 features. We produced all of the ads to Mr. Stern and the
11 data that confirms that VNA never geotargeted or geofenced
12 these advertisements.

13 We've made people available for depositions. In
14 Ms. Griffiths deposition, who you ordered us to produce, she
15 identified one additional person, Jace Connor, the Director of
16 Digital Communications, who we have agreed to make Mr. Connor
17 available for deposition to fully address this potential
18 geotargeting question.

19 But where we sit today is that not only does VNA
20 expressly deny ever geotargeting any ads in response to
21 anything, but we've produced all of that data. We've produced
22 those documents. And we produced witnesses and will produce
23 Mr. Connor who all are going to say and have said that there
24 was no geotargeting with respect to anything in any effort to
25 influence any potential jurors.

1 Now Mr. Stern has modified what he's claiming is the
2 need for this to I think what he's been calling a
3 misinformation campaign. And he's talking about Tweets and
4 the Flint Facts website, both which happened after the jury
5 was impaneled and the jury was instructed and ordered not to
6 follow media. But all of those Tweets and that website are
7 public.

8 If there's some particular Tweet or addition to the
9 website that Mr. Stern thinks needs the Court's attention,
10 even though it has nothing to do with the claims or defenses
11 in this lawsuit, obviously feel free to bring it to the
12 Court's attention.

13 But we're now demanding additional witnesses that go
14 to this, quote, misinformation campaign close quote that has
15 nothing to do with the geotargeting issue. In fact, Your
16 Honor already struck a third party subpoena related to this
17 very issue because you concluded that it went too far afield
18 and wasn't targeted to this geotargeting question.

19 Now with respect to these two particular witnesses
20 that we're talking about, Mr. Farcot has never worked for VNA.
21 He worked for VE, who's not a party to this lawsuit. He left
22 as of September 30, 2022. VNA has never had any control over
23 him. They certainly do not have any control over him now.
24 Mr. Farcot resides in France. He is not someone we can simply
25 produce for deposition.

1 Now plaintiffs obviously can attempt to secure his
2 deposition through The Hague Convention, but that's an issue
3 for another day. So at least with respect to Mr. Farcot --
4 and I'll address Mr. Obadia in one second -- the substance of
5 this has gone way far afield of the geotargeting issue.

6 It's now general discovery related to a
7 disinformation campaign that is -- that are related to Tweets
8 and a website that is public. And if Mr. Stern has issues
9 with any of those Tweets, he can bring them to the Court's
10 attention.

11 THE COURT: Well, Mr. Olsen, let's stop for just a
12 minute on Mr. Farcot. Now that I know he's the individual who
13 was sitting just a little to the right of my line of sight for
14 a great many days of our six months in trial, is he in the
15 United States now?

16 MR. OLSEN: He resides in France.

17 THE COURT: I know. But he resided in Ann Arbor for
18 a good number of weeks if not months during the trial. And so
19 I'm just interested in do you know if he's in the United
20 States now? Because he could be served while he's here.

21 MR. OLSEN: As of the moment, I have no idea where
22 Mr. Farcot is at this moment. My belief is he's probably in
23 France because that's where he lives, but I don't have any
24 idea where Mr. Farcot is at this moment. We certainly don't
25 control him.

1 Now obviously, again, this has nothing to do with the
2 geotargeting.

3 THE COURT: Well, let me say something about that.
4 Because I hear your argument that the discovery that I advised
5 you that I thought would be important to take in this case, I
6 focused on the digital media campaign that was identified in
7 the Detroit News article that I was interested in I think is
8 important to ensuring a fair trial.

9 And so my focus was certainly on whether individual
10 jurors who had been impaneled or jurors -- the zip codes for
11 jurors in the venire had been involved in some way in conduct
12 of that nature. Or whether it's ongoing. And we have three
13 or more trials scheduled still. Well, I guess three. That
14 are in line to be tried in this case. So it matters what's
15 going on in an ongoing basis.

16 The Supreme Court case, *Gentile v State Bar of*
17 *Florida*, the 1991 case, has a quote that I think is worth
18 focusing on. And it says few, if any, interest under the
19 constitution are more fundamental than the right to a fair
20 trial by impartial jurors and an outcome affected by
21 extrajudicial statements.

22 So in 1991, they weren't thinking of geotargeting,
23 but they talked about extrajudicial statements would violate
24 that fundamental right to a fair trial. And so and that case
25 talked about First Amendment balances in limiting

1 extrajudicial statements.

2 And so I take to heart the Supreme Court's words
3 there that it's not just a targeted campaign of some sort.
4 But digital media can influence jurors. And relevant to our
5 work, we have a jury trial coming up now in October of 2023.
6 And it matters to me that this be a fair impartial jury. It
7 matters to you. It matters to everybody here.

8 And so I think that the decision I made with respect
9 to the subpoena of the Detroit News related to the Tiger Joyce
10 Op-Ed that was dramatically factually inaccurate on some
11 fundamental issues that I think could be very misleading for
12 potential registrants and claimants under the settlement.

13 I was deeply worried about that article going out and
14 causing confusion, hysteria, chaos in the settlement process.
15 That was something I was very worried about.

16 But that individual article coming from a media
17 outlet has a -- there's a different balance there than a
18 deposition of somebody who works for the -- is it for the
19 parent company of the VNA defendants in this case?

20 MR. OLSEN: Well, he no longer works for that
21 company.

22 THE COURT: Well, worked. Past tense. Thank you.

23 MR. OLSEN: Worked.

24 And I would say two things in response, Your Honor.
25 The first substantively with respect to the scope of

1 discovery. Now that we're past the geotargeting issue,
2 there's nothing secret about what VNA said during the trial or
3 since. Plaintiffs have access to that website. They have
4 access to all of the Tweets just like any member of the
5 public.

6 If there are any Tweets or postings that plaintiffs
7 think are improper, they should raise them with the Court.
8 But they haven't done that.

9 There's no evidence of any improper effort to
10 influence any jurors or potential jurors. They simply claim
11 the right to broad discovery by using the words
12 "disinformation campaign" without identifying a single piece
13 of disinformation. And are -- and I just don't think that's
14 proper.

15 There's been no showing that this discovery that
16 admittedly doesn't go to any claims or defenses in this case
17 should be ongoing for -- I agree with respect to the integrity
18 of the judicial process is important. But there's no evidence
19 that that is even in question.

20 Now with respect to the two witnesses in particular,
21 VNA does not control these two witnesses. Mr. Farcot doesn't
22 work for even the parent anymore.

23 THE COURT: Okay.

24 MR. OLSEN: And with respect to Mr. Obadia, I think
25 it's important to note he, again, does not work for VNA. He

1 is currently employed with VE. But VNA cannot force him to
2 appear in any event.

3 It's important to note that Mr. Obadia was already
4 deposed in this case. Plaintiffs' counsel went through The
5 Hague Convention to secure that deposition.

6 THE COURT: That wasn't Mr. Stern and it wasn't
7 related to this issue. If I recall, it was Mr. Leopold who
8 brought it to the Court's attention on behalf of the class
9 case.

10 MR. OLSEN: Your Honor, when you say it wasn't
11 related to this issue, it was class plaintiffs. And class
12 plaintiffs' justification for that deposition and I quote was,
13 "Mr. Obadia was a key witness because he played a central role
14 from Paris in coordinating Veolia's media campaign to spread
15 misinformation in order to shift blame publicly for its role
16 in causing the Flint Water Crisis." Precisely --

17 THE COURT: And when was that? When did it take
18 place?

19 MR. OLSEN: I don't remember the date of when it --

20 MR. STERN: 2018.

21 MR. OLSEN: 2018. And so this is squarely the topic
22 that was part of his first --

23 THE COURT: No, it's not. 2018, the trial hadn't
24 begun.

25 MR. OLSEN: All right. So again, substantively, no

1 one is pointing to a single Tweet or a single thing on the
2 website that's part of some disinformation campaign.

3 THE COURT: Well --

4 MR. STERN: Judge, may I clarify something?

5 MR. OLSEN: And just one more point.

6 THE COURT: Well, let me let Mr. Olsen finish.

7 MR. OLSEN: With respect to Mr. Obadia, again, we
8 cannot force him. He does not work at a party in this case.
9 Just like Mr. Leopold did, if the Court decides at deposition
10 -- a second deposition of Mr. Obadia is appropriate,
11 plaintiffs would have to go through the same process that
12 class plaintiffs went through to conduct it through the
13 procedure set out in The Hague Convention.

14 THE COURT: Okay. Mr. Stern.

15 MR. STERN: Just as an initial matter, we do not
16 agree or concede that there's no evidence of a geotargeted
17 campaign.

18 There's not a single person that we have deposed so
19 far who had anything to do on a day-to-day basis with
20 utilizing a Google advertisement campaign and how the
21 interaction between social media and driving people to a
22 website actually worked and who the people were that were
23 actually driven to that website.

24 Yes, Veolia produced a hundred documents, half of
25 which are unreadable. We can't even see what they say. But

1 we do not concede that there was not a geotargeted campaign.

2 Number two, Mr. Obadia is in constant contact with
3 VNA. The witnesses have testified that on a monthly basis or
4 a semi-monthly basis, they meet with him and other members of
5 Veolia about the litigation, about the communications.

6 They were put in charge in France of all
7 communications during the trial. And now it's very convenient
8 to say, well, we have nothing to do with them. I mean,
9 they're their own entity.

10 So they were in trial every day with his red socks
11 sitting in the back while Your Honor asked about the Tweets
12 sending out Tweets. It's not the Tweets themselves that are
13 the issue.

14 The issue is the utilization of social media to drive
15 potential jurors to a website that was being continuously
16 updated during the trial about facts during the trial that
17 were factually inaccurate. We haven't even scratched the
18 surface of that.

19 And so it's a convenient thing for Mr. Olsen to say
20 we produced documents. There's no geotargeting. Your Honor
21 said back last month that the only interest she has in this is
22 whether certain zip codes were chosen. And we've shown you
23 through documents that no zip codes were chosen. So this is
24 done. This is over.

25 It's not over.

1 About Mr. Obadia. I understand that they're saying
2 Mr. Farcot no longer works for the company. I don't believe
3 that. But I understand that's what they're saying and I
4 understand that presently that is his status according to VNA.

5 There is no dispute that Mr. Obadia still works for,
6 in a very high role, Veolia. There is no dispute that he
7 communicates regularly with VNA about this litigation and
8 about the trials.

9 Yes, under the law, we need to go through The Hague
10 Convention. But these folks are in touch with this man. They
11 speak to him on a monthly basis. You talk about gamesmanship,
12 about putting someone through the ringer. I mean, just call
13 the guy --

14 THE COURT: Let me ask Mr. Olsen. Is somebody who
15 was in the position of Mr. Farcot or Farcot -- whatever it
16 is -- going to be at the next trial sitting in the back?

17 MR. OLSEN: I don't have any idea, Your Honor.

18 THE COURT: Okay. Well, and will you sign a
19 certification that will be filed on the docket that Mr. Farcot
20 no longer has any affiliation with any VNA entities?

21 MR. OLSEN: I don't know what affiliation. I'll have
22 to talk to the company. I know he no longer works for VE.
23 That's what I've been told. I'm happy to -- I don't know if
24 he has some kind of consulting. I don't know what his
25 arrangement is --

1 THE COURT: Okay. I'd like to know what his
2 arrangement is.

3 MR. OLSEN: And one other note, I think Mr. Obadia
4 was deposed in 2021, not 2018.

5 THE COURT: It may have been 2021 that it finally
6 took place, but that's still before the trial started.

7 MR. OLSEN: And the other important thing to note,
8 Your Honor, is the one thing that Mr. Stern said that I agree
9 with, which is pursuant to the law, there are rules in place
10 as to how to obtain these depositions.

11 Class plaintiffs' counsel understood and followed
12 those rules with respect to Mr. Obadia. And Mr. Stern says,
13 well, these Tweets that are so inaccurate and distorting, I
14 still haven't seen one that's inaccurate or distorting. He
15 doesn't point to anything. He just says the words. And with
16 respect to --

17 THE COURT: I have, Mr. Olsen. I have read Tweets
18 from VeoliaFlintFacts.com or whatever it is that seem to me to
19 be distorting of what I heard in the testimony in the trial.

20 MR. OLSEN: All right.

21 THE COURT: I'll just tell you really frankly, it
22 disturbed me to see that.

23 MR. OLSEN: And with respect to doing a second
24 deposition of Mr. Obadia, I think that it, put simply, we
25 agree what the law and the rules are. Mr. Stern and I agree

1 what the law and the rules are to secure Mr. Obadia's second
2 deposition on almost on the identical topic. And it's to go
3 through The Hague Convention.

4 THE COURT: Okay. So what I'll ask you to do is file
5 a certification on the docket with respect to Mr. Farcot and
6 his relationship with any Veolia entity and whether it exists
7 or not. And if he no longer has a relationship, when did that
8 become effective? When was he separated from the company?

9 I don't care about the reasons. Just I'd like to
10 know when.

11 And if you had -- I often order entities to give the
12 last known address and so on to the opposing counsel so that
13 they can serve deposition notices. So I don't need it to --
14 it can be redacted from the publicly filed notice. But I do
15 want the forwarding address for Mr. Farcot to be provided to
16 Mr. Stern.

17 MR. STERN: I have asked for that for two weeks. And
18 every lawyer I've spoken to for Veolia refuses to provide that
19 information for me. I understand the law. I wish I didn't
20 have to go through it. And if the shoe were on the other
21 foot, I would not make anybody jump through hoops of fire to
22 get a deposition that I think we're clearly entitled to.

23 Notwithstanding that -- understanding it, I asked for
24 the address. And they essentially told me to go pound sand.

25 THE COURT: Well, you could do that. But you'll also

1 get the address through this avenue.

2 MR. STERN: Thank you.

3 THE COURT: And with respect to Mr. Obadia, you know,
4 Mr. Olsen, you can certainly require that Mr. Stern go through
5 The Hague Convention. It looks like there's some time for
6 that process to take place.

7 But if you reconsider and are willing to communicate
8 with him, it seems that your team -- it was represented to me
9 that your team here in the United States at Veolia is in
10 regular communication with him. He was in charge, it sounds
11 like, of the trial related digital media.

12 Do I have that wrong? Am I correct about that?

13 MR. OLSEN: I don't know that he was at the trial.
14 But he's certainly involved in Veolia's media efforts and PR
15 efforts. That's true.

16 THE COURT: Okay.

17 MR. OLSEN: And I think -- I am not an expert in
18 French law, in The French Blocking Statute. But I don't think
19 it's easy as we can just produce someone for deposition, which
20 is why it's always safer to follow the law and the rules and
21 go through The Hague Convention just as Mr. Leopold did for
22 his first deposition.

23 THE COURT: Okay. That's what we'll do. But in the
24 meantime in your biweekly meetings or whatever it is that your
25 client has with Mr. Obadia, if he's in the United States or if

1 he's available and will make himself available, then I would
2 ask you to notify Mr. Stern.

3 I mean, the deposition will take place. It's just a
4 matter of when. And I do think that it's relevant to our case
5 for the reasons set forth by the Supreme Court in the Gentile
6 case.

7 It's not just geofencing or geotargeting that would
8 be a concern, but other extrajudicial statements and what the
9 purpose of them were. So and how they were fashioned, what
10 was the goal, how was it being achieved, how are you studying
11 the return on the investment in this campaign, and that sort
12 of thing.

13 Mr. Olsen, Veolia North America provides water
14 consulting services and water management services. Do I
15 understand -- throughout the United States.

16 MR. OLSEN: They did. I don't know how much they do
17 that in the United States today. But they did and I think
18 they still do.

19 THE COURT: Yeah. And it's just curious to me this
20 digital media campaign to reach people such as myself. I'm
21 not a municipal water manager.

22 What would be the point of trying to reach me with
23 this?

24 But there must have been a point. And so we need to
25 understand what it was and whether it was designed to impact a

1 future jury panel or the already impaneled jury.

2 And I agree with you that we instructed the jurors
3 not to read any media, but there's still a lot to be
4 understood about how this worked. Whether it was all that
5 easy for jurors to avoid these entries.

6 So I think, Mr. Stern, at this point you'd be
7 required to use The Hague Convention unless Mr. Olsen on
8 behalf of his client is willing to produce Mr. Obadia or
9 assist in producing Veolia -- VE's former employee Mr. Farcot.

10 MR. OLSEN: I will ask or I'll try to get an answer
11 from Mr. Obadia if he's interested in appearing voluntarily.
12 But I suspect this is where we're going to be left, Your
13 Honor, which is Mr. Stern should go through the Hague.

14 THE COURT: Okay. Yes.

15 MR. STERN: One last point I just want to note for
16 everybody is that as of a minute and a half ago, Mr. Farcot's
17 LinkedIn -- and again, LinkedIn is simply a social media tool.
18 But he's still employed, according to him, by VE, by Veolia.
19 And he's active on that site because he's continuously liking
20 posts from other Veolia employees since the time that it's
21 been represented he no longer works there and today.

22 So I understand they have no control over him. I
23 understand they're saying he left. I understand there's going
24 to be something filed. But for anybody in the world who
25 wanted to find this person and wonder where he works and

1 utilize LinkedIn for all of its purposes, as of today,
2 according to him, he still works for Veolia.

3 THE COURT: Okay. So Mr. Olsen, how much time do you
4 need to file this certification?

5 MR. OLSEN: I can file it next week, Your Honor, if
6 that's okay.

7 THE COURT: That would be great. Let's have it by
8 close of business on Wednesday of next week.

9 MR. OLSEN: Okay, Your Honor.

10 THE COURT: So Wednesday, December 7. Thank you.
11 Okay.

12 So Veolia submitted the topic, the status of
13 Bellwether II cases. And I am pleased to report that we found
14 I think a May 2022 email suggesting some schedule for the
15 Bellwether II cases. And that has not yet been entered but it
16 seems that some of the dates have come and gone.

17 So Mr. Olsen, what is your proposal here?

18 MR. OLSEN: May 20, we submitted competing proposals
19 to the court and where I'm going to finish is suggesting we do
20 that again. Just by way of background, as you know, this is
21 for adult plaintiffs alleging both personal injury and --

22 (Technical difficulties)

23 THE COURT: You're -- is it just me or can everyone
24 else hear Mr. Olsen?

25 MADAM COURT REPORTER: No, I can't hear him.

1 THE COURT: Mr. Campbell, can you take over?

2 MR. CAMPBELL: I think so. I hope -- I think what he
3 was going to say is that we will, once again, submit revised
4 proposals for the Bellwether II cases. And try to schedule
5 them.

6 It seems, at least to me, that the target should be
7 sometime after the anticipated end of Bellwether III, which is
8 the next set of children cases.

9 THE COURT: Yeah.

10 MR. CAMPBELL: But we'll get that to the Court.

11 THE COURT: Okay.

12 MR. CAMPBELL: And a lot of work was done when Your
13 Honor asked about the bellwether and the class schedules we
14 submitted, one for the Bellwether II as well.

15 THE COURT: Good. And I apologize for missing that.
16 The next time that you send us an email and you don't hear
17 from us within a week, just let us know. Send another email.
18 Make a phone call. Show up on a Zoom call and ask us about it
19 so that we don't lose track of anything.

20 MR. CAMPBELL: Very good.

21 THE COURT: Good. So when should I expect to get
22 that proposal? And I think I understand that the majority of
23 cases made belonged to Mr. Shkolnik and Mr. Napoli. Do I have
24 that?

25 MR. CAMPBELL: That's my understanding, Your Honor.

1 I think it's -- it's not exclusively, but it's the vast
2 majority. So what I would suggest --

3 THE COURT: Are they on the call? I don't see either
4 of them.

5 MR. CAMPBELL: I don't see -- I'm only looking at
6 partial screen. So I don't see them. But what I would
7 suggest, Your Honor, is that we contact -- and we've been in
8 contact with them about this. Continue to get whatever the
9 proposals are in the current form and get them to Your Honor
10 by, let's say, the end of next week. Does that work?

11 THE COURT: Sure.

12 MR. STERN: Your Honor, I see Patrick Lanciotti on
13 the Zoom. And he has like an emoji hand raised thing. I
14 don't know how that works. But he looks like he's here.

15 THE COURT: Oh, there. Mr. Lanciotti?

16 MR. LANCIOTTI: Good afternoon, Your Honor.

17 THE COURT: We can't see you but we just heard your
18 voice.

19 MR. LANCIOTTI: Yes, I apologize. I let Ms. Calhoun
20 know earlier I'm having some driver issues with my camera, so
21 I was unable to turn it on. So I didn't want to be as a
22 panelist without my camera.

23 But I agree with what Mr. Campbell said. We will
24 confer on the prior draft of the Bellwether II order and get
25 something to the court very shortly.

1 THE COURT: Okay. Thank you. And there was a
2 request to postpone certain dates in the class trial. And it
3 was granted in part. And I think we've already docketed the
4 new schedule.

5 We allowed a little extra time for summary judgment.
6 But if we go any further, it will be too close to the date of
7 the trial for me to do my end of that, making a decision and
8 getting it written and issued. So I hope that works for
9 everybody.

10 And then the last issue here is VNA's dispute with
11 co-liaison counsel regarding certain data for plaintiffs'
12 expert, Dr. Specht.

13 MR. OLSEN: Yes, Your Honor. Can you hear me again?
14 I apologize. I obviously got kicked out of the conference.

15 THE COURT: Yes.

16 MR. OLSEN: So on Dr. Specht, you know Dr. Specht
17 well. In preparing for the BW1 retrial and then the
18 Bellwether III trial, we reviewed Dr. Specht's bone lead
19 measurements with our experts and realized that Dr. Specht had
20 failed to produce the algorithms and formulas he used to
21 generate the measurements. His pXRF device does not simply
22 spit out a reading. Instead, he developed algorithms and
23 formulas to take the raw data generated by the device and
24 filter out other factors and --

25 MADAM COURT REPORTER: Excuse me, Mr. Olsen, can you

1 slow down?

2 THE COURT: Yes. Thank you. He slowed way too far
3 down and now he's frozen.

4 (Technical difficulties)

5 THE COURT: Mr. Campbell?

6 MR. OLSEN: -- stripped out of --

7 THE COURT: Oh, wait. Mr. Olsen, you're freezing on
8 and off. So I'm just going to ask Mr. Campbell if you're up
9 on this issue?

10 MR. CAMPBELL: Your Honor, I am not up on the issue
11 to the extent that I can give you the chapter and verse that I
12 think Mr. Olsen was about to give you on some specifics of the
13 data.

14 The way that I would say it is this, there is certain
15 data that Dr. Specht collected and analyzed and used in his
16 publications and used as support or the basis on which he
17 developed his opinion.

18 THE COURT: But Mr. Campbell, his opinions in his
19 academic journal articles or in our case?

20 MR. CAMPBELL: I would say both, Your Honor.

21 THE COURT: Okay.

22 MR. KENT: The papers and then the papers used as the
23 basis from which the opinions are made.

24 THE COURT: Right.

25 MR. CAMPBELL: And we have identified, I think very

1 precisely, datasets and analyses that have not been produced.
2 They should be available to Dr. Specht and that's what this
3 concerns.

4 To the extent that there is more to this, I have to
5 defer until Mr. Olsen returns because I did not study up on it
6 before.

7 THE COURT: Okay. I think he's back.

8 MR. OLSEN: I'm sorry, Your Honor. I keep getting
9 kicked out. The issue is that he produced some data but the
10 algorithm --

11 THE COURT: And Mr. Olsen, let me do this. Right
12 when you froze earlier, we were asking you to slow down.

13 MR. OLSEN: Oh, okay. I'm being quick, Your Honor,
14 just because I'm worried I'm going to get kicked out. But I
15 will be slow. Apparently the internet connection where I am
16 in Michigan is spotty.

17 But Dr. Specht used formulas and algorithms to
18 generate the measurements he's opining out. And those
19 underlying formulas were stripped out of the data -- the
20 spreadsheets that we received. And obviously Dr. Specht is
21 relying on those calculations in forming his opinions.

22 And we would like the ability -- because experts must
23 disclose the facts or data considered in forming those
24 opinions, we'd like the ability to essentially check his work
25 and get access to the formulation -- the underlying formulas

1 and protocols that he used to do his calculations.

2 MR. STERN: May I respond, Judge?

3 THE COURT: Yes.

4 MR. STERN: So as an initial matter, the request that
5 I received about -- and I am shocked that the lawyers for
6 Veolia are just not mentioning this. The request that I
7 received for Dr. Specht's data related to Bellwether I kids.

8 This came on November 8, 2022, saying that in light
9 of the deposition that took place in 2020 related to the
10 Bellwether I kids, Veolia wanted certain things. Three sets
11 of calibrations. They want an Excel document to be produced
12 in original format with data and formulas. They wanted
13 another document to be produced in original format with data
14 and formulas. And then they want the written MATLAB language,
15 the code that he used in his creation of utilizing this
16 device.

17 As an initial matter, we haven't served anything
18 related to the Bellwether III cases. And as everybody knows,
19 the Bellwether I case has been taken off of the Court's
20 calendar.

21 So to be spending time arguing over reports and
22 depositions that took place in 2020 related to a trial that
23 already happened and is not happening again, that's an
24 important fact to raise in bringing to the Court's attention
25 an issue like this.

1 With regard to the actual specific substance of what
2 Veolia is asking for, according to Dr. Specht, all of the
3 calibration documents that he has, they have. He produced
4 them. He says there is nothing that has not been produced.

5 In terms of the Shanghai children data, which Your
6 Honor might be familiar with in terms of his testimony, they
7 have all of the values and all of the other information
8 associated with that data are published and available in the
9 paper that he wrote about that study. So there is nothing
10 missing there.

11 So really the only issue, even if they were entitled
12 to all of the stuff, our expert says they have it. He has
13 nothing else. And that's for Bellwether I, not Bellwether
14 III.

15 In terms of the code, I think Your Honor has already
16 said previously when it came to other litigants who were
17 trying to get to the heart of how he wrote code and what he
18 did that he didn't have to produce that, and so what he says
19 is this would essentially be asking him to give them a Ph.D.
20 in medical physics, that that's why they have experts to talk
21 about why he's doing wrong the things he's doing based on what
22 he has produced and based on his testimony.

23 So A, I think this is premature because they haven't
24 been provided anything for Bellwether III which is now what's
25 next in terms of a trial. So they need to wait first to see

1 what he actually produces with his reports that are due in the
2 coming weeks. And two --

3 THE COURT: When are those reports due?

4 MR. STERN: Well, they were originally -- we don't
5 know. They were originally due I believe Friday. And then
6 the parties proposed some small changes to the schedule and
7 provided that by email to Ms. Calhoun yesterday.

8 And so depending on how the Court, you know, decides
9 whether to permit this recalibration, no pun intended, of the
10 deadlines, they would then be due I think the first week of
11 January rather than the first week of December with no
12 alterations to the trial or any of the other more substantive
13 deadlines down the road.

14 THE COURT: And not to get totally sidetracked --
15 we'll get back to Dr. Specht.

16 But Mr. Olsen, do you have any objection to the
17 proposed schedule that Mr. Stern and Ms. Daly submitted?

18 MR. OLSEN: No objection to the proposed schedule,
19 Your Honor.

20 And Mr. Stern is right, this came up in the context
21 of the Bellwether I retrial. The reason we're raising it is
22 unless they're not using Dr. Specht as a witness in Bellwether
23 III, we're firmly going to be at issue on this same topic.

24 And just substantively, if we want to have this same
25 fight in a month when we get the same information, I mean

1 plaintiffs have said they're not producing what we're looking
2 for. Now I heard today that it doesn't exist.

3 But our experts tell us that they have reviewed all
4 of the data information that Dr. Specht provided and that
5 their underlying algorithms and formulas used to get those
6 conclusions that have not been provided. And our expert
7 believes that their issues with how Dr. Specht did those
8 calculations.

9 But you cannot evaluate those calculations fully
10 without getting the underlying algorithms and formula and code
11 in terms of how they were done, which Dr. Specht obviously is
12 relying on to make his opinions.

13 THE COURT: Why don't we do this, which is I'll adopt
14 the schedule that you all have submitted. And see what is
15 produced. And then I think I would benefit from a two- or
16 three-page summary of the -- exactly what you're looking for,
17 when you asked for it, what you got.

18 I don't want to see the documents myself. I don't
19 want to read the code myself. But I want a summary of what
20 your position is and what you say you need and you don't have.
21 And then Mr. Stern can respond.

22 MR. OLSEN: No problem, Your Honor. When we get the
23 report -- I assume we're going to get a report from
24 Dr. Specht -- and if there's anything new to produce, we'll
25 evaluate it and then we will make the submission you just

1 suggested, Judge Levy.

2 THE COURT: Okay. And I'm interested in whether
3 December 21 I can set aside for another status conference.
4 And we either will or won't have topics. But at least the
5 time is reserved.

6 MR. STERN: We'll always be available from plaintiffs
7 perspective if Your Honor schedules a conference.

8 MR. OLSEN: That works for me, Your Honor.

9 THE COURT: Good. Okay. Anything else at this time?

10 MR. ERICKSON: No, Your Honor.

11 THE COURT: Great. Take care everyone. And I'll see
12 you on the 21st.

13 (Proceedings Concluded)

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15

16 CERTIFICATE OF OFFICIAL COURT REPORTER

17 I, Jeseca C. Eddington, Federal Official Court
18 Reporter, do hereby certify the foregoing 34 pages are a true
19 and correct transcript of the above entitled proceedings.

20 /s/ JESECA C. EDDINGTON
21 Jeseca C. Eddington, RDR, RMR, CRR, FCRR

12/2/2022
Date

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